

## PREFACE

Exempt Organizations (EO) is dedicated to fulfilling the IRS mission to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness. Customer Education & Outreach (CE&O) works closely with Exempt Organizations staff to accomplish this by:

- Developing tailored education programs for customer categories
- Coordinating the development, revision and design of forms, publications and other non-speaker outreach activities
- Making standardized educational materials available for outreach efforts
- Establishing a way for customers to be heard

This workshop and our materials are part of a customized program for representatives of small and medium-sized exempt organizations. We hope that this text helps you become more familiar with tax laws governing exempt organizations and understand how compliance with these laws will strengthen the organization(s) you represent.

The material in this book is for educational use only and may not be cited as precedent.

*/s/ Lois G. Lerner*

Lois G. Lerner  
Director, Exempt Organizations

## CHAPTER 6

### EMPLOYMENT ISSUES

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**Employment Taxes**

Exempt organizations withhold and pay federal employment taxes under the same rules as other employers.

501(c)(3) organizations that pay wages to employees must withhold, deposit, and pay employment tax, including federal income tax withholding and Social Security and Medicare (FICA) taxes. If total compensation paid to an employee of an exempt organization is less than \$100 in a calendar year, however, that compensation is not subject to FICA tax.

501(c)(3) organizations do not pay federal unemployment (FUTA) taxes on the wages of their employees, but other exempt organizations do. Any person who fails to withhold and pay employment tax may be subject to penalties.

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**Worker Status: Employee or Independent Contractor**

An employer generally does not have to withhold or pay taxes on payments to independent contractors. But if an organization incorrectly classifies an employee as an independent contractor, it may be held liable for the tax. Understanding classification is essential to fulfilling legal responsibilities for withholding and information reporting on workers.

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**Definition of Employee**

For federal tax purposes, a person is an employee if his employer has the right to tell him what to do and how to do it. This right to control is important, even if it is not exercised.

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## EMPLOYMENT ISSUES, Continued

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### **Independent Contractor Defined**

An independent contractor is self-employed, carrying on an independent trade or business. An organization has some right to direct or instruct an independent contractor, but less than with an employee. An independent contractor has a genuine possibility of profit or loss. An employee who receives a salary does not normally incur business losses.

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### **Worker Classification: Three Categories of Evidence**

Worker classification is determined by the relationship between the entity and the worker. The IRS has developed three categories of evidence to determine if a worker is an employee or an independent contractor. Often some facts will favor employee status and some will favor independent contractor status. To make a correct determination, an entity must consider both the evidence for autonomy and the evidence for right to control.

The three specific categories of evidence are:

- (1) Behavioral control
  - (2) Financial control
  - (3) Relationship of the parties
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### **Behavioral Control**

The factors showing the right to direct or control how the worker performs the task are:

- Instructions – An employee is generally subject to the organization's instructions about when, where, and how to do the work; what tools or equipment to use; what order or sequence to follow; etc.
  - Training – An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.
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## EMPLOYMENT ISSUES, Continued

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### Financial Control

The factors showing the right to direct or control the financial aspects of the worker's activities include:

- Significant Investment – An independent contractor often has a significant investment in the facilities used in performing services for someone else. Does the worker own the standard tools and equipment of the trade or profession? Is there a significant investment in equipment? Does the worker maintain a separate office?
  - Unreimbursed Expenses – Independent contractors are more likely to have unreimbursed expenses than employees. Does the worker hire and pay helpers?
  - Services Available to the Relevant Market – An independent contractor is free to seek out business opportunities. Does the worker advertise and maintain a visible business location?
  - Method of Payment – An employee is guaranteed a regular wage amount for an hourly, weekly or other period of time. An independent contractor is usually paid a flat fee for a job.
  - Opportunity for Profit or Loss – An independent contractor can make a profit or loss.
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### Important Facts

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### New Ideas

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## EMPLOYMENT ISSUES, Continued

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### Relationship of the Parties

These factors show how the parties perceive their relationship:

- Intent of the Parties/Written Contracts – A written contract specifying employee or independent contractor status is important evidence. However, the entire substance of the relationship must be considered.
  - Employee Benefits – Providing a worker with typical employee benefits (e.g., health insurance or a pension plan) is evidence of employee status.
  - Discharge/Termination – Can the firm terminate or discharge the worker or can the worker leave before the task is completed without becoming liable for nonperformance under the contract or agreement? These facts suggest employee status.
  - Regular Business Activity – Are the services an important aspect of the regular business of the entity? If so, an employer-employee relationship may be indicated.
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### IRS Help on Classification Issues

The IRS has free publications to assist in resolving questions of worker classification and other questions in the area of employment. These are:

- Publication 15, (*Circular E*), *Employer's Tax Guide*
- Publication 15-A, *Employer's Supplemental Tax Guide*
- Publication 1779, *Independent Contractor or Employee*

For help in determining whether a worker is an employee for purposes of federal employment taxes and income tax withholding, an organization should file Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Tax and Income Tax Withholding*. The instructions explain where to file the form. Also, an organization might consider consulting an accountant, attorney, or the IRS directly for assistance with employee classification.

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## EMPLOYMENT ISSUES, Continued

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### State or Other Federal Classification Requirements

Different federal and state agencies make determinations of employee classification based on the facts of each case and the applicable law. IRS determinations may differ from those of state government agencies. If an exempt organization plans to classify some workers as independent contractors, it may want to obtain a separate ruling from each agency.

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### Employees and Non-Employees – Defined by Statute

The following positions are classified as employees or independent contractors by law:

Corporate Officers: A corporation officer is an employee unless he/she performs no services, or only minor services, and neither receives nor is entitled to receive any remuneration, directly or indirectly. Corporate officers include presidents, vice presidents, treasurers, etc. This is so even if:

- The officer is the sole shareholder and, as such, controls his or her own duties and remuneration.
- The officer is supplied by a leasing company.

Corporate Director: A corporate director is an **independent contractor**.

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### Important Facts

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### New Ideas

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## EMPLOYMENT ISSUES, Continued

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### **Payment of Compensation**

After an organization has decided on the proper classification of its workers, it must consider many other requirements for paying compensation. The following paragraphs outline important issues and requirements for dealing with the IRS and the Social Security Administration (SSA).

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### **Registering For a Federal ID Number**

If an organization is required to report employment taxes or provide tax statements to employees, it needs an employer identification number (EIN). The EIN is a nine-digit number issued by the IRS, with digits arranged as follows: xx-xxxxxxx. The EIN identifies employers' tax accounts (as well as certain entities without employees), and must be visible on all items sent to the IRS or SSA.

If an organization does not have an EIN, it must request one by completing Form SS-4, *Application for Employer Identification Number*. Form SS-4 has information on how to apply by mail or by phone. An organization now may also apply for an EIN online at:

<http://www.irs.gov/businesses/small/article/0,,id=102767,00.html>.

Upon submitting the online application, an EIN will be issued immediately. A copy also will be mailed to the organization at the address listed on the application.

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### **Federal Forms Completed by Employees**

The following forms are completed by employees and retained by employers:

- Form I-9, *Employment Eligibility Verification*
  - Form W-4, *Employee's Withholding Allowance Certificate*
  - Form W-5, *Earned Income Credit Advance Payment Certificate*
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## EMPLOYMENT ISSUES, Continued

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### **Form I-9, Employment Eligibility Verification**

The Immigration and Nationality Act (8 U.S. Code section 1356 et seq.) requires employers – regardless of total number of employees – to verify that all persons hired after Nov. 6, 1985, are legally authorized to work in the United States and prohibits employers from knowingly hiring or employing persons not authorized to work.

Form I-9, used to verify employment eligibility, is available from U.S. Citizenship and Immigration Services (USCIS).

The law requires employers to ensure that every employee completes Section 1 of Form I-9 when hired. New employees also must complete Section 2 within 3 days of hire. This law requires employers to review documents establishing the employee's identity and work eligibility. The documents that satisfy the verification requirements are listed on Form I-9.

Employers should not make hiring decisions based on applicants' national origin or citizenship status when they are authorized to work in the U.S. Questions like "What is your national origin?" and "Are you a U.S. citizen?" may be considered discriminatory and should not be asked in an interview.

Employers may, however, ask whether an applicant is legally authorized to work in this country.

The USCIS provides detailed information on requirements in Publication M-274, *Handbook for Employers*. The material also may be obtained via the Citizenship and Immigration Services' website at:  
<http://uscis.gov/graphics/lawsregs/handbook/hnmanual.htm>.

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## EMPLOYMENT ISSUES, Continued

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### **Form W-4, Employee's Withholding Allowance Certificate**

All new employees should complete Form W-4, and this form should be effective with the first pay date. It guides an employer in determining the proper income tax withholding rate for each employee. If a new employee does not provide a completed Form W-4, single status with zero withholding allowances should be assumed.

A Form W-4 remains in effect until the employee submits a new one. Employees who claim exemption from withholding must complete a new Form W-4 each year by Feb. 15. For the effective date of a replacement Form W-4, see IRS Publication 15, (*Circular E*), *Employer's Tax Guide*.

Copies of the W-4 must be sent to the IRS if the employee:

- Claims more than 10 withholding allowances
- Claims an exemption from withholding and his or her wages would normally exceed \$200 per week

Copies received during the quarter from employees still employed at the end of that quarter can be sent to the IRS with the quarterly Form 941 filing (see below). Employers must complete boxes 8 and 10 on any Form W-4 sent to the IRS.

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### **Form W-5, Earned Income Credit Advance Payment Certificate**

Employees eligible for the Earned Income Credit (EIC) who have a qualifying child living with them may receive advance EIC payments with their pay during the year. Employees who need advance EIC payments must provide a completed Form W-5, *Earned Income Credit Advance Payment Certificate*, which shows eligibility requirements.

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### **Federal Forms Used for Independent Contractors**

An organization using independent contractors must complete the following forms:

- Form W-9, *Request for Taxpayer Identification Number and Certification*
  - Form 1099-MISC, *Miscellaneous Income*
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## EMPLOYMENT ISSUES, Continued

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### **Form W-9, Request for Taxpayer Identification Number and Certification**

Use Form W-9, *Request for Taxpayer Identification Number and Certification*, for a TIN and to request certifications and claims for exemption from a U.S. person (including a resident alien), partnership, or corporation.

Organizations should keep this form and not send it to the IRS.

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### **Reporting Non- Employee Payments on Form 1099- MISC**

Organizations should use Form 1099-MISC, *Miscellaneous Income*, to report payments to independent contractors of \$600 or more. This should include fees, salaries, commissions, wages, prizes, and awards for services performed as a nonemployee.

Payments to a for-profit corporation need not be reported on Form 1099-MISC. However, employers must use Form 1099-MISC to report payments of \$600 or more for medical or health care services provided by corporations, including professional corporations.

Forms 1099-MISC must be provided to payees by January 31 and filed with the IRS by February 28 (March 31 if filing electronically) for all payments made in the prior calendar year. Paper Forms 1099-MISC are transmitted to the IRS using Form 1096, *Annual Summary and Transmittal of U.S. Information Returns*.

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### **Important Facts**

### **New Ideas**

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## EMPLOYMENT ISSUES, Continued

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### **Penalties for Failure to Furnish Form 1099-MISC**

Penalties may apply if organizations:

- Fail to file on time without reasonable cause
- Fail to include all information required
- Provide incorrect information

A \$50 penalty per document is charged unless corrections are made within approved time frames.

Additional penalties apply if organizations:

- Fail to provide the statement to the payee by January 31
- Fail to include all information required
- Include incorrect information

A \$50 per statement penalty is charged (with a maximum of \$100,000 per year) regardless of how soon after the due date a correct statement is furnished.

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### **Withholding Federal Taxes**

How much federal income tax to withhold is based on the employee's W-4. See Publication 15, (*Circular E*), *Employers Tax Guide*, to determine the correct amount.

Social Security and Medicare taxes are levied on both the employer and the employee. The employer must withhold the employee's part of the taxes and pay a matching amount.

The Social Security tax rate for 2011 is 4.2 percent for each employee's wages, with the employer providing 6.2 percent for a total of 10.4 percent. For wages paid in 2011, tax is withheld and paid until the employee's wages exceed \$106,800, unchanged from 2010.

The Medicare tax rate is 1.45 percent for each employee with a 1.45 percent employer match for a total of 2.9 percent. Unlike the Social Security tax, there is no maximum amount set for wages subject to Medicare withholding.

In the future, refer to Publication 15, (*Circular E*), *Employer's Tax Guide* for updates.

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## EMPLOYMENT ISSUES, Continued

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### **Backup Withholding**

Employers must withhold 28 percent of nonemployee compensation payments if the payee fails to furnish his or her correct TIN. A state government tax agency may also require backup withholding. In some cases, the IRS requests backup withholding for other reasons. Backup withholding does not apply to wages paid to employees.

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### **Depositing Federal Taxes**

Employers deposit federal employment taxes using the Electronic Federal Tax Payment System (EFTPS) or by mailing or delivering a check, money order, or cash to an authorized financial institution. Some employers are required to use EFTPS.

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### **Filing Federal Employment Tax Returns**

The following are some employment returns or forms that are required of most organizations:

- Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*
- Form 941, *Employer's Quarterly Federal Tax Return*
- Form 944, *Employer's Annual Federal Tax Return*
- Form 945, *Annual Return of Withheld Federal Income Tax* (referring to nonpayroll payments and backup withholding)
- Form W-2, *Wage and Tax Statement*
- Form W-3, *Transmittal of Wage and Tax Statements*
- Form 5500, *Annual Return/Report of Employee Benefit Plan*

Organizations should refer to the instructions for each of these returns or forms as well as Publication 15, (*Circular E*), *Employer's Tax Guide*, to determine the schedule for making deposits.

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## EMPLOYMENT ISSUES, Continued

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### **Form 940, Employer's Annual Federal Unemployment (FUTA) Tax**

FUTA, along with state unemployment systems, provides for payments of unemployment compensation to workers who have lost their jobs. FUTA does not apply to the wages of employees of 501(c)(3) organizations, but wages paid by other tax-exempt organizations are subject to FUTA. Only the employer pays FUTA tax; it is not deducted from employees' wages.

Form 940 is due on Jan. 31 for wages paid in the prior calendar year. However, if an employer deposited all FUTA tax when due, it may file on or before Feb. 10.

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### **Form 941, Employer's Quarterly Federal Tax Return**

Each quarter, employers who pay wages subject to income tax withholding or Social Security and Medicare taxes must file Form 941, *Employer's Quarterly Federal Tax Return*. (In some cases an employer is required to file Form 944 or an exception applies.) Form 941 must be filed by the last day of the month that follows the end of the quarter.

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### **Form 944, Employer's Annual Federal Tax Return**

Employers who qualify file Form 944, *Employer's Annual Federal Tax Return*, instead of Form 941. Those filing Form 944 have until January 31 after the end of the calendar year. An organization gets an additional 10 days if the taxes are paid in full by the due date.

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### **Exceptions to Forms 941 and 944 Filing Requirements**

The following exceptions apply to Forms 941 and 944 filing requirements:

- Seasonal businesses, such as a summer recreational camp, do not have to file for the quarters when they have no tax liability because they have paid no wages. An organization that will not have to file a return for one or more quarters during the year should check the seasonal employer box on line 17 of Form 941.
  - Agricultural employers use Form 943, *Employer's Annual Tax Return for Agricultural Employees*.
  - Income tax withholding on non-payroll items and backup withholding must be reported on Form 945, *Annual Return of Withheld Income Tax*.
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## EMPLOYMENT ISSUES, Continued

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### **Form 945, Annual Return of Withheld Federal Income Tax**

Employers should use Form 945, *Annual Return of Withheld Federal Income Tax*, to report withholding from nonpayroll payments, such as pensions, annuities, IRA distributions and backup withholding. Organizations should check with their state's tax department for details on state withholding and reporting requirements.

Form 945 is due by Jan. 31 following the calendar year in which the reportable payments were made.

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### **Penalties: Form 940, Form 941, Form 944, and Form 945**

There are penalties for:

- Late deposits
- Insufficient deposits
- Failure to deposit using EFTPS (when required)
- Late filing, unless you can show reasonable cause. If you file late, attach an explanation to the return.

There are also penalties for willful failure to pay tax, file returns, and filing false or fraudulent returns.

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### **Form W-2, Wage and Tax Statement**

Employers should use Form W-2 to report wages paid to each employee. From these reports, the Social Security Administration (SSA) computes employees' benefits at the time of retirement or disability or their families' survivor benefits. Earnings are also used to determine eligibility for Medicare.

The IRS uses the reports to enforce income tax laws and to ensure that the FICA taxes that employers pay are properly credited to the Social Security and Medicare programs.

Employers must file Form W-2 for wages paid to each employee from whom:

- Income, Social Security, or Medicare tax was withheld.
  - Income tax would have been withheld if the employee had claimed no more than one withholding allowance or had not claimed exemption from withholding on Form W-4, *Employee's Withholding Allowance Certificate*.
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## EMPLOYMENT ISSUES, Continued

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### **Form W-2, Wage and Tax Statement** (continued)

Employers should do the following:

- File Copy A of Form W-2 with the SSA by February 28 (March 31, if filing electronically).
- Use Form W-3 to transmit Copy A of Form W-2.
- If required to file 250 or more Forms W-2, file them electronically unless the IRS grants a waiver.
- Furnish Copies B, C and 2 of Form W-2 to employees by January 31.

Organizations should file a final return if they terminate or cease to pay wages to an employee.

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### **Penalties for Failure to Furnish Form W-2**

If an employer fails to file a correct Form W-2 by the due date, and cannot show reasonable cause, it may be subject to a penalty of \$50 per document unless corrections are made within specified timeframes.

The penalty applies if the organization:

- Fails to file on time
- Fails to include all information required
- Includes incorrect information
- Files on paper when required to file electronically
- Reports an incorrect TIN
- Fails to report a TIN

In order to facilitate timely and accurate returns on unresolved topics or issues, an organization should permit the IRS to speak with their third-party designee (employee or tax preparer) to discuss the form by checking the appropriate box on the Form 940, 941, 944, or 945.

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## EMPLOYMENT ISSUES, Continued

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### **Penalties for Failure to Furnish Form W-2 (continued)**

If an employer fails to provide correct W-2 payee statements to employees and cannot show reasonable cause, it may be subject to a penalty. The penalty applies if the employer:

- Fails to provide the statement by January 31
- Fails to include all information required
- Includes incorrect information on the statement

The penalty is \$50 per statement, regardless of when a correct statement is furnished, with a maximum of \$100,000 per year.

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### **Important Facts**

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### **New Ideas**



## EMPLOYMENT ISSUES, Continued

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**Form 5500,  
Annual  
Return/Report  
of Employee  
Benefit Plan**

Any administrator or sponsor of an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) must file information about each plan every year using Form 5500, *Annual Return/Report of Employee Benefit Plan*.

The IRS, Department of Labor (DOL), and Pension Benefit Guaranty Corporation have consolidated certain returns and report forms to reduce the filing burden for plan administrators and employers. By complying with the Form 5500 instructions, employers and administrators will satisfy the annual reporting requirements for the IRS and DOL.

Employers must file all required forms and schedules with the Employee Benefits Security Administration by the last day of the seventh month after the end of the plan year. For a calendar year plan, the due date will be July 31.

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**Penalties:  
Form 5500**

ERISA and the Code empower the DOL and IRS to impose penalties for giving incomplete information and for not filing statements or returns. Various penalties may be imposed for not meeting the Form 5500 filing requirements, including:

- A penalty of up to \$1,100 a day for each day a plan administrator fails or refuses to file a complete report
  - A penalty of \$25 a day (up to \$15,000) for not filing returns for certain plans of deferred compensation, trusts and annuities, and bond purchase plans by the due date
  - A penalty of \$1 a day (up to \$5,000) for each participant for whom a registration statement is required but not filed
  - A penalty of \$1,000 for not filing an actuarial statement
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## EMPLOYMENT ISSUES, Continued

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### **Income Tax Records to Retain for Employees**

Exempt organizations must keep accurate and complete records for income tax, Social Security and Medicare taxes, and FUTA paid for each employee. These records should be kept for 4 years.

Examples of the types of income tax records that should be kept include:

- Name, address, and SSN
  - Amount and date of each wage payment and the period of time the payment covers
  - Amounts subject to withholding (for each wage payment)
  - Amount of withholding tax collected on each payment and the date collected
  - If the taxable amount is less than the total payment, the reason for the difference
  - Copies of any statements furnished by employees relating to nonresident alien status, residence in Puerto Rico or the Virgin Islands, or residence or physical presence in a foreign country
  - Fair market value and date of each payment of noncash compensation
  - For accident or health plans, information about the amount of each payment
  - Withholding allowance certificates (Form W-4) filed by each employee
  - Any agreement between employer and employee on Form W-4 for voluntary withholding of additional amounts of tax
  - If necessary to figure tax liability, the dates in each calendar quarter on which any employee worked outside the course of your trade or business, and the amount paid for that work
  - Copies of employee statements that report tips received, unless the information shown on such statements appears in another item on this list
  - Requests by employees to have their withheld tax calculated on the basis of their individual cumulative wages, and any notice that such a request was revoked
  - Form W-5, *Earned Income Credit Advance Payment Certificate*, and the amounts and dates of the advance payments
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## EMPLOYMENT ISSUES, Continued

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### **Social Security and Medicare Tax Records to Retain for Employees**

Examples of the types of Social Security and Medicare tax records that must be kept:

- Amount of each wage payment subject to Social Security tax
  - Amount of each wage payment subject to Medicare tax
  - Amount of Social Security and Medicare taxes collected for each payment and the date collected
  - Reason for any difference between the total wage payment and the taxable amount
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### **Federal Unemployment (FUTA) Tax Records to Retain for Employees**

Examples of the types of FUTA records that must be kept:

- Total amount paid to employees during the calendar year
  - Amount of compensation subject to the unemployment tax and the reason for any difference between that amount and the amount of total compensation
  - Amount paid into the state unemployment fund
  - Any other information required to be shown on Form 940 (or Form 940-EZ)
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### **Other Federal Agencies**

Other federal agencies regulate employment issues. For more information contact them at:

Social Security Administration (SSA)  
Telephone: 1-800-772-1213  
Website: [www.ssa.gov](http://www.ssa.gov)

U. S. Department of Labor (DOL)  
Telephone: 1-866-4-USA-DOL  
Website: [www.dol.gov](http://www.dol.gov)

U.S. Citizenship and Immigration Services  
Telephone: 1-800-375-5283  
Website: [www.uscis.gov](http://www.uscis.gov)

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## EMPLOYMENT ISSUES, Continued

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### For More Information

- Publication 15, (*Circular E*), *Employer's Tax Guide*
- Publication 15-A, *Employer's Supplemental Tax Guide*
- Publication 15-B, *Employer's Tax Guide to Fringe Benefits*
- Publication 505, *Tax Withholding and Estimated Tax*
- Publication 509, *Tax Calendars*
- Publication 531, *Reporting Tip Income*
- Publication 919, *How Do I Adjust My Tax Withholding?*
- Publication 966, *Now a Full Range of Electronic Choices to Pay All Your Federal Taxes*
- Publication 1244, *Employee's Daily Record and Report of Tips to Employer*
- Publication 1779, *Independent Contractor or Employee*
- Publication 3144, *Tips on Tips: A Guide to Tip Income Reporting for Employer*
- Publication 3148, *Tips on Tips: A Guide to Tip Income Reporting for Employees*
- Form SS-4, *Application for Employer Identification Number*
- Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*
- Form W-2, *Wage and Tax Statement*
- Form W-3, *Transmittal of Wage and Tax Statements*
- Form W-4, *Employee's Withholding Allowance Certificate*
- Form W-5, *Earned Income Credit Advance Payment Certificate*
- Form W-9, *Request for Taxpayer Identification Number and Certification*
- Form 940, *Employer's Annual Federal Unemployment (FUTA) Tax Return*
- Form 941, *Employer's Quarterly Federal Tax Return*
- Form 944, *Employer's Annual Federal Tax Return*
- Form 945, *Annual Return of Withheld Federal Income Tax*
- Form 1096, *Annual Summary and Transmittal of US Information Returns*
- Form 1099-MISC, *Miscellaneous Income*

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### Forms and Publications

You may order forms and publications by calling (800) 829-3676, or by downloading them from [www.irs.gov/formspubs/](http://www.irs.gov/formspubs/).

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## Employment Issues - Quiz

These organizations are fictitious and are used only for learning purposes. Information in these samples may not be cited as law.

1. ABC Foundation placed the following advertisement in the newspaper.

*A friendly individual who enjoys working with people is needed to answer a multi-line telephone, greet visitors, make coffee, and perform various other tasks when time permits. This qualified individual must be able to work from 8:00 a.m. – 5:00 p.m. The position pays \$10 an hour.*

**Would this person be an employee or independent contractor?**

2. DEF Country Club, Inc. is looking for an experienced accountant specializing in working with tax-exempt organizations. The accountant must be able to prepare a compilation of the financial statements, present these statements to the board of directors, perform the annual gambling audit, and prepare the 990 and 990-T returns at the end of the year by the due date.

**Would this person be an employee or independent contractor?**

3. The president of ABC Foundation manages the day-to-day activities of the organization, supervises managers, signs the organization's checks, presides over monthly board meetings, and performs other tasks as necessary to ensure the successful operation of the organization.

**Would this person be an employee or independent contractor?**

4. GHI Private School for the Gifted hired a janitor to clean up the school after hours. The janitor must provide all necessary equipment and supplies. He must clean three times a week when the school is not in session. The janitor is provided a key to the school. The school is billed monthly for the services of the janitor. The janitor has several other clients.

**Would this person be an employee or independent contractor?**

## **Employment Issues – Quiz, Continued**

5. JKL Youth Bowling League was sued as a result of a youth dropping a bowling ball on a spectator's foot. The spectator, Mr. Jackson, filed suit in district court and is suing for \$250,000. JKL Youth Bowling League contracts with a local attorney who specializes in this type of lawsuit. The attorney charges \$250 per hour.

**Would this person be an employee or independent contractor?**

6. The MNO Little League organization hired coaches selected by the league's officers. The board sets the times and places for all the games. The coaches are fathers or mothers of the children who play on the team. The organization has established policies and procedures that coaches are required to follow. The officers do not interfere with the coaching unless there is a problem. The coaches receive \$500 per season.

**Would these coaches be employees or independent contractors?**

7. PQR Theatre places the following advertisement in the newspaper.

*Needed: Ushers, ticket takers, and ticket sellers. Hourly rate is negotiable based on experience and reliability.*

**Would these workers be employees or independent contractors?**

8. A salaried golf professional and his assistants manage the country club's pro shop. In addition, the club requires them to give lessons to the club's members at its established rates.

**Would these persons be employees or independent contractors?**

9. A golf professional sells lessons and equipment on golf club premises. She sets prices, makes appointments and carries on her activities with permission of the club, but without orders or instructions from club members or officials.

**Would this person be an employee or independent contractor?**

**Employment Issues – Quiz, Continued**

10. The STU Foundation hires van drivers to transport physically disabled individuals to their doctors' appointments. The STU Foundation owns the vans, pays the insurance and all other related expenses for the vans, and only uses the vans for this purpose. The van drivers are not allowed to take side trips. Their purpose is solely to transport physically disabled individuals to their doctor's appointments.

**Would these persons be employees or independent contractors?**

11. The STU Foundation hires van drivers to transport physically disabled individuals to their doctors' appointments. The drivers own their own vans and pay for the gas, insurance, and maintenance. The drivers charge \$1 per mile and are willing to stop anywhere.

**Would this person be an employee or independent contractor?**

12. XYZ Anonymous engages in charitable gambling. It hired a gambling manager who supervises employees conducting the pull tab games, prepares the monthly reports, audits the games, makes the deposits, and reports at the monthly meetings.

**Would this person be an employee or independent contractor?**



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